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Summary record of the 2176th meeting
Held at Headquarters, New York, on Monday, 22 March 2004 at 10 a.m.

Chairperson: Mr. Wieruszewski (Vice-Chairperson)

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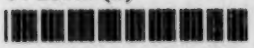
04-28082 (E)



In the absence of Mr. Amor (Tunisia), Mr. Wieruszewski (Poland), Vice-Chairperson, took the Chair.

The meeting was called to order at 10.10 a.m.

General comments of the Committee (*continued*)

Draft general comment on article 2 (*continued*) (CCPR/C/74/CRP.4/Rev.5)

Paragraph 10

1. **The Chairperson** invited the Committee members to continue their discussion of the draft general comment paragraph by paragraph, beginning with paragraph 10.

2. **Sir Nigel Rodley**, who had formulated the draft general comment, drew the Committee's attention to the proposed amendments to paragraph 10. The amended text, beginning at the end of the third line, would read: "where there are substantial grounds for believing that there is a real risk of irreparable harm in the country to which removal is to be effected or in any country to which the person may subsequently be removed, such as the harm contemplated by articles 6 and 7 of the Covenant". The first part reflected research carried out for the Office of the United Nations High Commissioner for Refugees (UNHCR) by two distinguished international lawyers, Sir Elihu Lauterpacht and Daniel Bethlehem. The section beginning "in the country to which removal is to be effected ..." had also been suggested by UNHCR, and was intended to address the phenomenon of "chain deportations" or "chain *refoulement*".

3. **The Chairperson** asked whether the phrase "contemplated by articles 6 and 7 of the Covenant" might be placed after the words "irreparable harm".

4. **Mr. Scheinin** said that that formulation might be a bit restrictive, as other cases might also apply, for example those covered by article 8.

5. **Mr. Kälin** agreed with the version of the text as proposed by Sir Nigel Rodley, as it best reflected current international law. However, although the addition proposed by the Chairperson might indeed be too narrow in scope, the formula proposed by Sir Nigel Rodley — the so-called "such as" approach — was very broad, and might inspire unjustified hopes in some quarters. He would therefore suggest the addition of a phrase such as "in particular", so that the sentence would read "in particular the harm contemplated by articles 6 and 7 of the Covenant".

6. **Ms. Wedgwood** said that the word "may" in the phrase "or in any country to which the person may subsequently be removed" seemed rather open-ended; she wondered whether a phrase such as "may foreseeably" might be used instead. Otherwise, it might be impossible to effect any removal at all without having to request a number of country-specific guarantees as to what might happen.

7. **Ms. Chanet** said that she was in favour of the amendments proposed by Sir Nigel Rodley, and did not share Ms. Wedgwood's misgivings about the wording. However, she was opposed to the insertion of a reference to articles 6 and 7 after the words "irreparable harm", as such a formulation would be too restrictive, and would exclude, for example, women's rights, which were not covered by those articles.

8. **Mr. Kälin**, referring to Ms. Wedgwood's suggestion, noted that the standard in the case of chain deportations was whether there were "substantial grounds for believing" that such deportations might occur. He therefore felt that the formulation proposed by Sir Nigel Rodley was sufficient.

9. **Mr. Shearer** said that he was in favour of the version proposed by Sir Nigel Rodley, but wondered whether an explanatory footnote, or a reference to the relevant jurisprudence, might be added.

10. **Sir Nigel Rodley** said that the addition of the words "in particular", as suggested by Mr. Kälin, would not seriously restrict the text. With respect to Ms. Wedgwood's suggestion concerning the word "may", he shared Mr. Shearer's interpretation. He would be reluctant to add a footnote, as the Committee had decided to try to avoid them, but he would be open to the use of different language, if the Committee felt that was appropriate.

11. **Mr. Yalden** suggested that it might be better, from a stylistic viewpoint, to add the reference to articles 6 and 7, in parentheses, after the words "irreparable harm".

12. **Ms. Wedgwood** suggested that the word "either" should be added before the words "in the country", in order to avoid ambiguity.

13. *Paragraph 10, as amended, was adopted.*

Paragraph 11

14. **Mr. Kälin** noted that the words "alternatively; already" in paragraph 11 were not needed, and should be deleted.

15. *Paragraph 11, as amended, was adopted.*

Paragraph 12

16. **Sir Nigel Rodley** noted that the International Commission of Jurists had requested the addition of the word "political", so that the last part of the paragraph would read "cannot be justified by reference to social, cultural, economic or political considerations within the State".

17. **Mr. Solari Yrigoyen** suggested that the word "political" should be added before the word "social".

18. *Paragraph 12, as amended, was adopted. Paragraph 13 was deleted.*

Paragraph 14

19. **Sir Nigel Rodley** drew the Committee's attention to the following sentence: "Such remedies should be appropriately adapted so as to take account of the special vulnerability of certain categories of person, such as children", which had been suggested by the Chairperson of the Committee on the Rights of the Child. He also drew attention to the sentence beginning, "The Committee notes that ...", which concerned the role of the judiciary in deciding on the direct applicability of the Covenant. That sentence had been proposed and formulated by Mr. Kälin, and supported by the Vice-Chairperson of the Committee on Economic, Social and Cultural Rights. Thirdly, he also proposed — again, at the suggestion of the latter committee — to insert the following phrase between the penultimate and last sentences of the paragraph: "Specialized national human rights institutions endowed with appropriate powers can contribute to this end". It was important to acknowledge the value of such specialized bodies.

20. **Ms. Chanet** said that she had reservations concerning the sentence beginning "The Committee notes ...", as it implied discrimination against legal systems that did not permit direct application of the Covenant. Moreover, courts could not be forced to apply the Covenant, since it was a contract between States. The Committee could do no more than ask States to encourage the courts to recognize direct applicability, if their domestic law allowed individuals to invoke the provisions of the Covenant.

21. **Mr. Amor** suggested that in the French text of the sentence beginning in English "Such remedies should ...", the phrase "*des faiblesses*" should be replaced by the words "*de la vulnerabilité*". Moreover, the sentence should either make no reference to children, or indeed to any particular category or person, or should refer to several categories, such as indigenous peoples and women. If the reference to "children" were to be retained, perhaps it should be amended to "such as children, in particular".

22. **Mr. Yalden** suggested that in the first sentence of the paragraph the phrase "remedies to vindicate" should be replaced, perhaps by a phrase such as "remedies designed to achieve those rights in practice". Furthermore, the word "specialized" should be omitted from the additional sentence proposed by Sir Nigel Rodley, as it might be misunderstood to refer to human rights institutions with limited jurisdictions.

23. **Mr. Scheinin**, referring to Mr. Amor's suggestion, proposed that if a list of categories were to be added, the word "detainees" should be included. However, it might be best not to refer to any categories at all. With respect to Ms. Chanet's observations, he said that Sir Nigel's proposed addition resulted in a balanced text, since it referred to national human rights institutions that, specifically because the Covenant was not formally part of domestic law, often played a key role by receiving complaints and deciding whether there had been a breach of the Covenant. However, he would delete the phrase "that are considered to be self-executing", partly because it repeated the idea of "direct applicability" and partly because it represented just one approach. He agreed with Mr. Yalden that the word "specialized" should be deleted. Finally, he wished to address a question previously discussed by the Committee, namely, the question whether the cessation of the violation was an essential part of the remedy. He proposed that a sentence should be added to that effect, perhaps at the end of the paragraph under consideration.

24. **Mr. Ando** said that he shared the concerns of other members regarding the specific reference to children. He agreed with Ms. Chanet that the Committee should not address too closely the issue of direct applicability and self-executing provisions. The Committee could replace the sentence with general

language, or simply delete it. He supported Sir Nigel Rodley's proposal to add a sentence referring to human rights institutions, and did not object to the addition proposed by Mr. Scheinin. Lastly, he wondered why the word "considerable" had been included in the sentence beginning "The Committee attaches considerable importance to ...".

25. **Mr. Rivas Posada** noted that the Spanish text used the word "executables" in the third line of paragraph 10; that did not appear to be the correct word, and he wondered whether it was an accurate translation of the English version.

26. **Ms. Wedgwood** said she doubted that the proposed sentence beginning "The Committee notes ..." was inclusive enough. It was to be hoped that not just courts or human rights organizations, but all organs of government as well, would take international norms into account when taking their decisions.

27. She believed that Mr. Scheinin's proposal to end the sentence after "provisions of international law", would cause problems in countries having dualist legal systems. Without the final phrase, the sentence would imply that even in a dualist system a judge would have the obligation to make the international norm self-executing — which might not be considered to be within a judge's prerogatives — and that, by failing to allow direct applicability, the judge would be in breach. An approach that allowed judges subtlety in their application of the Covenant might well be more effective.

28. She suggested replacing the word "promoted" by the word "assured", saying that "promoted" had connotations of judicial activism.

29. **Mr. Glélé Ahanhanzo** said that he agreed with Ms. Chanet. He suggested adding language requesting Member States that had not done so to take the necessary legislative measures to give effect to direct applicability.

30. **The Chairperson** said he also agreed with Ms. Chanet, and drew attention to the sentence in paragraph 11 beginning "Article 2 allows a State party ...". The amendment under discussion would be more suitably placed in that paragraph, which dealt with the status of the Covenant under domestic law, following the sentence he had cited.

31. **Mr. Kälin** said that he had proposed the amendment to the paragraph under discussion because the paragraph addressed potential threats to the right to an effective remedy. He had observed a worrying trend, in that courts, particularly in countries having a monist legal system, were not applying international law, saying simply that it was not self-executing. For that reason, he felt that the sentence should be added to paragraph 14, but he would not insist on retaining the amendment if other members were against it.

32. **Ms. Chanet** said that courts could not be considered in the same light as national institutions. Justice was not a national institution. The Covenant spoke of the impartiality and the independence of the courts, not of the independence of national institutions. The Committee could not on the one hand tell States that the courts were independent, and on the other oblige them to put pressure on the courts to apply international norms. That was not the way to achieve direct applicability. Judges did not like to be told what to do, and any attempt to do so might prove counter-productive.

33. **Mr. Yalden** agreed with Ms. Chanet that the sentence was inconsistent with the idea of an independent judiciary.

34. **Mr. Scheinin** said that there was nothing incompatible with the independence of the judiciary in emphasizing its role in the implementation of the Covenant. If national human rights institutions were mentioned, then the judiciary must be mentioned. He suggested retaining the sentence, but broadening its scope by adding, after the phrase "effectively promoted" the following language: " by the judiciary in many different ways, including direct applicability of the provisions of the Covenant, application of comparable constitutional or other provisions of law, or the interpretive effect of the Covenant in the application of national law".

35. **Mr. Glélé Ahanhanzo** said he that agreed with Mr. Kälin's proposal, as complemented by Mr. Scheinin. The questions that the Committee asked States parties on measures they had taken to apply the Covenant had become something of a ritual, and the time had come to take action to resolve the problem. He believed that a more effective way of achieving the desired compliance was to incorporate the sentence proposed by Mr. Kälin, completed by language that reflected his proposal.

36. **Mr. Bhagwati** said that he supported Mr. Scheinin's proposal because, in a common law

system, the provisions of the Covenant were not automatically applicable under domestic law. The judiciary was obliged to take the rights provided for under the Covenant into account when interpreting that law.

37. **Sir Nigel Rodley**, replying to the points raised by the members, said that Mr. Glélé Ahanhanzo's proposal was already reflected in the final sentence of paragraph 11. Mr. Kälin's proposal was not constraining, but merely encouraged judges to be more open and more willing, where they felt they had some discretion, to use that discretion in applying the international law rights guaranteed in the Covenant. He said that it was hard to express it well and he doubted that it would be influential.

38. He said that the word "enforceable" in the first sentence had a legal sense that strengthened "effective", but he would agree to its deletion.

39. **Mr. Scheinin** said that the Optional Protocol used the language "effective and enforceable".

40. **Sir Nigel Rodley** said that, in his opinion, the word "vindicate" implied the ability to require respect for the right, whereas "achieve" lacked any sense of requirement, but he would not insist on retaining "vindicate".

41. With respect to the second sentence, he said that children, and perhaps other vulnerable groups such as the aged or the disabled, were not, by virtue of their biological status, to be considered with adults. Adults could tolerate conditions — for example, denial of liberty — that r. ght in and of themselves be torture to any of those groups. He agreed with the proposal to replace the phrase "such as children" by "including, in particular, children". He agreed that "considerable" could be deleted from the next sentence, and that the word "specialized" could be deleted in the context of "national human rights institutions".

42. **The Chairperson** confirmed the inclusion of Sir Nigel Rodley's proposed second sentence, including the final language, Mr. Kälin's proposed sentence beginning "[t]he committee notes ...", as amended by Mr. Scheinin, as well as the new sentence beginning "[n]ational human rights institutions ...". A final sentence proposed by Mr. Scheinin, which read, "Cessation of an ongoing violation of the Covenant is an essential dimension of the right to an effective remedy.", would also be included.

43. *Paragraph 14, as amended, was adopted.*

Paragraph 15

44. **Sir Nigel Rodley** said that a number of non-governmental organizations had expressed the opinion that the penultimate sentence of paragraph 15 should contain other categories of remedy besides the ones mentioned. He saw nothing controversial in the proposal, which would be consistent with texts currently being considered in the Commission on Human Rights. He suggested that the sentence should be redrafted to read: "The Committee notes that, where appropriate, reparation can involve restitution, rehabilitation, and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices ...".

45. **Ms. Chanet** pointed out that the principle of non-repetition was also dealt with in paragraph 16. She had reservations about the concept, because it seemed to suggest that somehow violations were acceptable as long as they were not repeated, but if it had to go in she preferred to have it mentioned in paragraph 15 as one in a list of possible forms of reparation, as just proposed, rather than in a separate paragraph.

46. **Mr. Ando** said that, since the sentence on cessation of an ongoing violation had been added to paragraph 14 and paragraph 16 dealt with non-recurrence, perhaps "guarantees of non-repetition" could be safely omitted from the list in paragraph 15.

47. **The Chairperson** pointed out that cessation of an ongoing violation in the present was not the same as a guarantee of non-repetition in the future.

48. **Sir Nigel Rodley** said that there were three different situations to address. Cessation of an ongoing violation related to what was happening in the present to an individual, but cessation did not ensure non-repetition. A guarantee of non-repetition was an assurance given to a specific victim that the violation would not happen again. Preventing recurrence was not a victim-specific remedy, but a means of ensuring that a certain type of violation would not in the future affect others at risk. He did not believe that there would be duplication between paragraphs 15 and 16.

49. **Ms. Chanet** said that she was in favour of retaining the two ideas, but thought that "*renouvellement*", rather than "*répétition*" was the

appropriate word in the French version of paragraph 16.

50. **Mr. Yalden** said that he was troubled by the bald statement in paragraph 15: "the Covenant generally requires appropriate monetary compensation." It was true that in Optional Protocol cases the Committee often said at the end that the State party was required to make appropriate compensation, although it would necessitate a survey to determine whether the Committee's jurisprudence "generally" required it, but it was going too far to say that the Covenant required it. He would prefer to omit the word "monetary" and to eliminate the last sentence: "These modes of reparation will normally be in addition to that of compensation."

51. **Sir Nigel Rodley** said that he had not done the survey required to find the right adverb. However, it was a proposition of general international law laid down by the Permanent Court of Justice during the period between the wars that compensation was the normal form of reparation for any breach of international law, and he would hesitate to depart from it. Of course, there were cases, particularly under article 14, in which the finding itself was sufficient. The key word was "appropriate". Perhaps, by way of compromise, the last sentence could be deleted and the word "additionally" could be added to the sentence listing the forms of reparation, so that it would read: "... reparation can additionally involve ...".

52. **Mr. Yalden** said that "additionally" made the statement stronger rather than weaker.

53. **The Chairperson** said that one of the criticisms of the Committee's procedure was that, in contrast to the European system, its monetary compensation was weak. He proposed the wording "appropriate compensation, including monetary".

54. **Mr. Rivas Posada** said that he also had problems with the paragraph, particularly the last sentence as it was phrased in Spanish. The Committee must not leave the wording of the other language versions entirely to the translators, but must take responsibility for it. The English "normally" had been translated as "como norma", a very strong expression, suggesting that it was a firm rule, whereas in many cases the Committee did not call for monetary compensation.

55. **The Chairperson** agreed that it was important that all three language versions should be consistent.

56. **Mr. Bhagwati** said that to say, "the Covenant generally requires monetary compensation" was too broad. He would prefer a formulation such as "including, in appropriate cases, monetary compensation".

57. **Mr. Shearer** agreed that monetary compensation was not a requirement of the Covenant and suggested that the word "requires" could be replaced by "implies".

58. **Ms. Wedgwood** said that she preferred Mr. Bhagwati's formulation. Unless a survey had been done on countries' attitudes to the compensation implications of articles 9 and 14, the Committee was not in a position to say that it was the consensus position of States parties that reparation generally entailed compensation. Secondly, the importance of the Covenant lay in deterring repetitive violations of human rights, and insistence on the aspect of monetary compensation could detract from that.

59. **Ms. Chanet** said that there was a further linguistic problem, in that the English version used the same term ("compensation" or "compensated") in article 9, paragraph 5, and article 14, paragraph 6, whereas the other language versions used two different terms.

60. **Mr. Scheinin** said that "in appropriate cases" would be too narrow, given the broad practice of the Committee. What the third sentence was reflecting was that only two articles spoke about a specific form of remedy; otherwise the Covenant referred simply to an effective remedy. It was natural, given the international public law background, that compensation had become a standard remedy when no other forms were available. He would propose the following: "The Covenant requires appropriate monetary compensation whenever no other remedy would be effective."

61. **Mr. Yalden** said that it might be the broad practice of the Committee to call for monetary compensation, but it was not the case that the Covenant stipulated it. He would be satisfied if the word "monetary" were deleted, even though compensation generally implied something of monetary value in any case.

62. **Mr. Scheinin** said that the Committee was simply interpreting the right to an effective remedy. Its practice was not separate from the provisions of the Covenant; it was based on it.

63. **Sir Nigel Rodley** said that another possible solution was to say: "The Committee considers that the Covenant generally requires appropriate monetary compensation." However, he would prefer simply to delete "monetary".

64. **Ms. Chanet** said that she preferred Mr. Scheinin's wording, since it was soundly based on article 2, paragraph 3 (c), of the Covenant. However, she was not happy with the word "impose" in the French as a rendering of "requires".

65. **Mr. Scheinin** suggested the composite wording: "The Committee considers that the Covenant requires appropriate compensation whenever no other remedy would be effective."

66. **The Chairperson** said that that wording suggested that parallel forms of reparation were not possible.

67. **Sir Nigel Rodley** said that compensation should not be considered a last resort. That would be a reversal of the sense of the paragraph and the Committee's practice.

68. **Mr. Yalden** proposed that the sentence should read: "The Committee considers that the Covenant generally entails appropriate compensation." "Entails" was somewhat weaker than "requires" and somewhat stronger than "implies".

69. **The Chairperson** said he took it that the Committee favoured that wording and wished to delete the last sentence of the paragraph.

70. *Paragraph 15, as orally amended, was adopted.*

Paragraph 16

71. *Paragraph 16 was adopted.*

Paragraph 17

72. **Sir Nigel Rodley** drew the Committee's attention to the third sentence of the first part of the paragraph, which read: "These obligations arise notably in respect of those violations recognized as criminal under international law, such as torture and similar cruel, inhuman and degrading treatment (article 7), [summary and arbitrary killing (article 6) and enforced disappearance (articles 7 and 9 and, frequently, 6)]." The brackets resulted from a reluctance to assume that summary and arbitrary killings and enforced disappearances were necessarily criminal under international law. Although he did not share that view, acts did not have to be criminal under international law in order for there to be an obligation to prosecute under the Covenant. He therefore proposed deleting the reference to international law and retaining the words in brackets, so that the sentence would read: "These obligations arise in respect of certain violations of the Covenant, such as torture and similar cruel, inhuman and degrading treatment (article 7), summary and arbitrary killing (article 6) and enforced disappearance (articles 7 and 9 and, frequently, 6)."

73. The sentence that followed, as originally expressed, had been thought to be too strong. Of the weaker options offered in brackets, he would prefer to say that the problem of impunity "may be", or better, "may well be", rather than "is often seen as" an important contributing element in the recurrence of the violations. In the last sentence, the new language, "as part of a widespread or systematic attack on a civilian population", was taken from article 7 of the Statute of the International Criminal Court.

74. In the second part of the paragraph, which could be made into a separate paragraph, the words in bold, "and prior immunities and indemnities", had been added to respond to a concern that perpetrators of violations were sometimes relieved of responsibility not only ex post facto but sometimes ex ante, when security forces were told in advance that no matter what actions they took against terrorists, for example, they would be immune from prosecution. Lastly, the new sentence at the end of the paragraph on States assisting each other to bring perpetrators to justice had been suggested by a member of the Committee against Torture.

75. **The Chairperson** pointed out that the reference to paragraph 16 in the first part of paragraph 17 would have to be altered to reflect the final paragraph numbering.

76. **Ms. Wedgwood** said that she supported the proposed amendments to the first part of paragraph 17. However, she wished to make two remarks in connection with the second part of that paragraph. First, she acknowledged the point made by Sir Nigel Rodley in relation to the second half of the first sentence, but pointed out that the language used in the draft ("States parties may not relieve perpetrators from personal legal responsibility") was unforgiving and far stronger than that used in paragraph 15 of general

comment No. 20. Second, she was concerned about the implications of the recommendation made in the third sentence, namely, that the defence of obedience to superior orders should be removed. Although the use of that defence was limited to cases in which the act in question was manifestly unlawful, such as torture, ruling out its use in all circumstances might be construed as an intrusion into the due process of criminal trials. She suggested attenuating the wording.

77. **Mr. Kälin** said he was not convinced that deleting the words "recognized as criminal under international law" from the third sentence of the first part of the paragraph was advisable. He suggested retaining that phrase and inserting the words "do mestic or" after the word "under" in order to show that, pursuant to article 2 of the Covenant, the Committee expected States parties to apply their own domestic law, as well as the relevant provisions of international law, to prevent impunity. The specific references to summary and arbitrary killing and enforced disappearances could be retained, since all those acts were punishable under either domestic or international law.

78. With regard to the new last sentence of the second part of paragraph 17, he felt that the language was a little ambiguous, as it might suggest that violations of the Covenant amounted to criminal acts in themselves. He therefore suggested modifying the sentence to read: "States parties should also assist each other to bring to justice persons suspected of having committed acts in violation of the Covenant that are punishable under domestic or international criminal law".

79. **Sir Nigel Rodley** endorsed Mr. Kälin's proposals. As far as the issue of amnesties was concerned, he had been under the impression that the formula "certain amnesties" had been deliberately chosen in order to take account of the concerns expressed by Ms. Wedgwood. The Committee could not espouse two conflicting points of view: historically, it had automatically called for the prosecution of individuals responsible for violations of, inter alia, articles 6 and 7 of the Covenant, hence it did not make sense to change its position by allowing for the granting of amnesties in such cases. Furthermore, in view of the Committee's jurisprudence (Rodríguez v. Uruguay, for example) and the United Nations stance on impunity, it was inappropriate for the Committee to suggest that States could relieve themselves of their obligations under international law.

80. **Mr. Kälin** supported Sir Nigel Rodley's view that the words "certain amnesties" in the first sentence of the second part of paragraph 17 and the subsequent reference to general comment No. 20 were sufficient to make the situation clear.

81. **Ms. Wedgwood** observed that, in a recent address in Washington, Philippe Kirsch, the President of the International Criminal Court (ICC), had responded to a query about the relationship of the Rome Statute to amnesties by stating that the Court would defer to democratically adopted amnesties when it was in the interests of justice to bring a case. She did not wish to see the Committee adopt a position that was at odds with that of ICC and, furthermore, she was concerned that the unremitting nature of the words "may not relieve" might result in the enunciation of principles that could not be adopted in practice. She suggested deleting the word "legal" from the sentence at issue in order to weaken the language.

82. **Mr. Rivas Posada** said that the words "and certain other" in the last sentence of the first part of paragraph 17 seemed redundant and proposed their deletion.

83. **Sir Nigel Rodley** said that it would be a mistake to narrow the field of that sentence, particularly since article 7 of the Rome Statute listed a number of acts in addition to those mentioned in the first part of paragraph 17 which would violate various provisions of the Covenant. However, he was willing to accept Mr. Rivas Posada's proposal, because the acts mentioned in the third sentence of the first part of paragraph 17 were introduced with the words "such as", which left scope for other unlisted violations.

84. *The first part of paragraph 17, as amended, was adopted.*

85. **Sir Nigel Rodley**, responding to the remarks made by Ms. Wedgwood, said that the comments of Mr. Kirsch, who had spoken in Washington in an extrajudicial capacity, could not be read as a conclusive expression of the Court's position. He was genuinely uncomfortable with the idea that the Committee appeared to be backtracking on its established practice of calling for those responsible for violations of the Covenant to be brought to justice, but was willing to accept Ms. Wedgwood's proposal and

delete the word "legal" if it would allow members to reach a consensus.

86. **Mr. Yalden**, supported by the Chairperson, said that he was inclined to support Ms. Wedgwood's proposal. With specific reference to the South African Truth and Reconciliation Commission, he said that exempting persons from criminal proceedings through the granting of an amnesty did not free them of personal and moral responsibility for their crimes.

87. **Mr. Shearer** said that, while he understood Sir Nigel Rodley's reservations, he endorsed Ms. Wedgwood's proposal. However, he felt that the words "are deemed" in the first sentence of the second part of paragraph 17 were misleading, as they implied derived rather than direct responsibility. He proposed redrafting the phrase in question to read: "Accordingly, where public officials or State agents have committed crimes which are also violations of the Covenant rights ...".

88. **Sir Nigel Rodley** pointed out that the sentence at issue was concerned with establishing individual legal responsibility for violations of the Covenant and not necessarily with punishment for such violations. However, he was happy to accept Mr. Shearer's proposal, and suggested the following wording, which also took account of Ms. Wedgwood's views: "Accordingly, where public officials or State agents have committed violations of the Covenant rights referred to in this paragraph, the States parties concerned may not relieve perpetrators from personal responsibility ...".

89. He was distressed by the reference to the Truth and Reconciliation Commission: the Government of South Africa had been forced to agree to that arrangement as a condition of putting an end to apartheid and reference to the creation of the Commission had been hastily added to the new Constitution as a postamble. It was therefore misguided to conceive of that exercise as being the fruit of a noble agreement between the parties.

90. **The Chairperson** suggested that the Committee should continue its discussion of the second part of paragraph 17 at a later date.

91. *It was so decided.*

92. **Ms. Wedgwood**, speaking on a point of order, said that she would be absent for part of the following week. Consequently, in the event that the draft general comment was adopted in her absence, she wished to register her objection to paragraph 10 and formally dissociate herself from the consensus in that regard.

93. **Sir Nigel Rodley** said that he was uncomfortable with Ms. Wedgwood's intention to dissociate herself from the consensus on paragraph 10, particularly since she had not participated in the discussions relating to that paragraph.

94. **Mr. Amor** stressed the importance of ensuring that the continuity of the Committee as an institution was maintained and that consensus among all members was achieved.

The meeting rose at 1.05 p.m.

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International Covenant on Civil and Political Rights

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Human Rights Committee
Eightieth session

Summary record of the 2177th meeting
Held at Headquarters, New York, on Monday, 22 March 2004, at 3 p.m.

Chairperson: Mr. Amor

Contents

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Initial report of Uganda

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of this document* to the Chief, Official Records Editing Section, room DC2-750, 2 United Nations Plaza.

Any corrections to the record of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

04-34813 (E)

The meeting was called to order at 3.05 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Initial report of Uganda (CCPR/C/UGA/2003/1, CCPR/C/80/UGA; HRI/CORE/1/Add.69)

1. *At the invitation of the Chairperson, the delegation of Uganda took places at the Committee table.*

2. **Mr. Butime** (Uganda), introducing the initial report (CCPR/C/UGA/2003/1), said that for nearly 30 years human rights violations had been perpetrated by the Governments in power in his country, but that with the accession to power of the National Resistance Movement in 1986, respect for democracy and good governance had been rebuilt and the observance of human rights made a priority. One of the first steps was to establish a Commission of Inquiry into human rights violations by public officials since the 1960s. In addition, Parliament, the judiciary, the Uganda Human Rights Commission and elements of civil society had been monitoring the human rights situation.

3. The Covenant had been ratified in 1995 and a new Constitution had been adopted, chapter 4 of which contained a bill of rights. The Constitution incorporated most of the provisions of the Covenant, guaranteeing rights such as equality and freedom from discrimination (art. 21 of the Constitution); the right to life (art. 22); the right to personal liberty (art. 23); protection from torture, cruel, inhuman or degrading treatment or punishment (art. 24); protection from slavery (art. 25); the right to a fair trial (art. 28); and the rights of freedom of conscience, expression, movement, religion, assembly and association (chapter 4).

4. Since the Government was now providing technical training in reporting techniques, he was confident that subsequent periodic reports would be submitted on schedule. In preparing the initial report, the Government had consulted with civil society organizations and had held an open debate with Members of Parliament, the diplomatic corps and non-governmental organizations. The Uganda delegation welcomed a dialogue with the Committee.

5. **The Chairperson**, expressing appreciation for the Government's efforts despite the delay in submitting its report, invited the delegation to address the list of issues (CCPR/C/80/L/UGA).

Constitutional and legal framework within which the Covenant is implemented (art. 2 of the Covenant)

6. **Ms. Zaale** (Uganda), referring to question 1 on the list of issues, said that since 98 per cent of the provisions of the Covenant had been incorporated into domestic law in chapter 4 of the Constitution, the Covenant implicitly had the force of law in Uganda even though it had never been directly invoked in the courts. The Uganda Human Rights Commission, however, had invoked some Covenant provisions in adjudicating complaints brought before it — as, for example, in a year 2000 complaint of torture in which the Commission's tribunal had cited article 7 in its finding against the Attorney-General.

7. **Mr. Kamya** (Uganda) said that, as part of the Government's efforts to combat official impunity for human rights violations and effectively prosecute guilty officials (question 2 of the list of issues), victims could seek redress either in the criminal courts or in the quasi-judicial tribunal of the Uganda Human Rights Commission, which also had wide powers. All public bodies, moreover, had internal disciplinary units which provided appropriate sanctions.

8. **Ms. Tindifa Mirembe** (Uganda) referred to access to legal services (question 3), and said that the majority of indigent victims of human rights violations had recently been bringing their complaints to the Uganda Human Rights Commission tribunal. Under the Advocates Amendment Act 2002, all advocates in Uganda were required to handle three pro bono cases each year as a prerequisite for certification as practising lawyers. Currently, a total of 275 pro bono cases were being handled annually, but the number would definitely increase when the Act was fully implemented and extended to all law firms. Also, a baseline survey was being conducted by a number of the member organizations of the Legal Aid Service Providers association aimed at increasing the coverage of legal aid services country-wide.

9. Furthermore, the Chain Linked Initiative — a network of all institutions involved in the court system — had been introduced to ensure speedy trials. The police force itself had set up a human rights and complaints desk and a childcare and family protection unit to deal specifically with human rights violations,

especially in the case of those who could not afford legal services. The police force had also introduced a community policing programme aimed at raising human rights awareness on the part of both police officers and members of the public. Under the programme, the police were authorized to conduct spot checks of prison cells in order to monitor human rights standards in prisons.

10. The Community Service Act 2000 had greatly improved the quality of justice for the poor. It empowered courts to provide community services for victims of violations. Moreover, the Penal Code Amendment Bill 2004 stipulated that compensation should be awarded to underage victims of sexual crimes.

11. In answer to question 4, she said that the Commission of Inquiry into violations of human rights (report, para. 31-38), founded in 1986 to investigate all aspects of human rights violations, breaches of the rule of law and abuses of power by government officials between 1962 and 1986, had begun that same year to investigate the mass murders and incidents of arbitrary deprivation of human life that had occurred; the many arbitrary arrests, detentions, imprisonments and abusive detentions under national security legislation; the denials of fair trials; the incidents of torture or cruel, inhuman or degrading treatment; the abuses of power by law enforcement agents and State security organs and any attendant human rights violations; mass displacements and expulsions of persons and consequent disappearances; discriminatory treatment of any kind by public officials in the application of the laws or in the performance of their functions; the denial of any other fundamental rights and freedoms under chapter 3 of the Constitution; and the shielding of perpetrators from due process of the law.

12. In the course of its work, the Commission had made recommendations for restoring order and preventing a repetition of Uganda's turbulent history, and many of those recommendations had been included in the 1995 Constitution notably, the establishment of a permanent human rights commission with power to investigate and provide redress for victims, and the enactment of a complete bill of rights and mechanisms of enforcement. Although the Commission had recommended taking action against past human rights violations, the general feeling was that its exposure of the perpetrators sufficed and that national reconciliation should take precedence over vengeance and punishment.

13. **Mr. Kakooza** (Uganda) said that the Uganda Human Rights Commission (question 5), established under the 1995 Constitution, had powers to hear complaints of human rights violations, which were comparable to the powers of the High Court. Its chairperson had the status of a high court judge and the other members were experts in the law or in general administration. The Commission had the authority to hear and investigate individual complaints and award damages. The orders to award compensation were enforced in the same manner as court orders. There were various departments within the Commission, among them a department to inform the public of its work and its complaint procedure and a research department. The Commission could also make recommendations to the Government regarding the need to comply with international human rights instruments and could advise the Government to ratify them. The resources of the Commission came from government funds, which covered salaries and operating expenses, and also from outside donors.

14. **Mr. Ssonko** (Uganda), referring to the compatibility of Uganda's counter-terrorism measures with the Covenant (question 6), said that the 2002 Anti-Terrorism Act, although it had been received with mixed feelings by some non-governmental organizations, had greatly helped to reduce the high rate of terrorist activities and violent crimes that had rocked the capital city between 1998 and 2000 and resulted in numerous deaths. Addressing the problem of terrorism did not call for a soft hand. The Government was dealing with terrorism through its Joint Anti-Terrorism Task Force, which comprised the Internal Security Organization, the External Security Organization, the police force, the Chief of Military Intelligence and the army. Suspected terrorists were currently being tried by general court martial.

Gender equality and prohibition of discrimination (arts. 3 and 26 of the Covenant)

15. **Mr. Kacwa** (Uganda), commenting on the advancement of women in the public and private sectors (question 7), pointed out that since 1995 a gender-sensitive Constitution had done much to increase their participation in all spheres of life. There were specific constitutional provisions on affirmative action, national objectives and principles of State

policy pertaining to women and gender and a ruling made by the Attorney General in 2002 had helped to achieve mainstreaming gender balance in filling government posts. Special arrangements had been made for apportioning seats for women in Parliament, and it was mandatory for at least one third of local government posts to be filled by women. In the private sector, women were increasingly active in the microfinancing industry and most of the recipients of microcredit were women. The Government also had a gender-sensitive policy and plan of action which aimed to empower women to participate in greater numbers in the country's development.

16. **Mr. Kakooza** said that among the traditional, historical, cultural or religious practices that contravened the Covenant (question 8), were the "bride price", polygamy, female genital mutilation, the inheritance of a widow by the late husband's brother, property inheritance, age of marriage and consent to marriage. Since they came under personal law, those contraventions were difficult to abolish by decree; polygamy, for example, was tolerated under Islamic law as well. Legislation to some extent had sought to minimize their effect on the social and economic life of the country and especially on women. A Domestic Relations Bill currently before Parliament was intended to reconcile the statutory, customary and Islamic legal systems by encouraging monogamous marriage, establishing stricter conditions for polygamous marriages and eliminating the bride price as a requirement for marriage under any system. The bill was aimed at making the inheritance of a widow unlawful, guaranteeing equal property rights to men and women in marriage and setting the age of marriage at 18 and providing that the union must be consensual.

17. Referring to question 9 on the list of issues, he said that, other than general prohibitions of violence and torture in the Constitution, the Penal Code and the law of torts, Uganda had no specific legislation about domestic violence. The Uganda Law Reform Commission and the Ministry of Gender, Labour and Social Development were drafting domestic violence legislation for submission to the Government in 2005.

18. **Mr. Kacwa** (Uganda), referring to question 10 on the list of issues, said that the Constitution provided a legal framework for eradicating female genital mutilation. Through the Ministry of Gender, Labour and Social Development, the Government was executing sensitization and advocacy programmes and was providing support to REACH, a local non-governmental organization (NGO) which found alternative employment for former practitioners of circumcision. Another NGO, Hope after Rape, counselled female victims of rape. Additionally, local communities were educated on the health problems associated with female genital mutilation. Generally speaking, the 1997 National Gender Policy established the institutional framework and mandate for addressing gender-related imbalances in all spheres. Support was being given, in particular, to efforts under the Domestic Relations Bill to establish gender equality and discourage such harmful traditional practices. His Government condemned female genital mutilation as a form of violence against women that was tantamount to torture. Efforts to prevent it, however, were impeded by culture, poverty, attitudes and lack of information.

19. Turning to question 11 on the list of issues, he said that, as a result of affirmative action measures in the public universities of Mbararaa and Makerere, female enrolment had increased from 30 per cent in the early 1990s to 47 per cent in 1997 and 48 per cent in 2000, nearly equalling boys' enrolment. In 2001 and, again, in 2003, 49.5 per cent of girls and 50.5 per cent of boys had been enrolled in primary schools. Enrolment figures in 2003 had been 3.6 million girls and 3.7 million boys. Primary school enrolment was promoted by programmes such as the Forum for African Women Educationists Girl Child Education Strategy and Complementary Opportunities for Primary Education (COPE). An Alternative Basic Education (ABEK) programme had increased school enrolment of nomadic Karimojong children from 5,500 in 1997 to its current level of 9,873.

Rights to life (art. 6 of the Covenant)

20. **Mr. Nsalasatta** (Uganda), referring to question 12 on the list of issues, said that the Uganda Law Reform Commission had proposed an amendment to the Penal Code that would abolish the death sentence for defilement. Capital punishment for that offence, defined as sexual intercourse with a girl under 18 years of age, had been instituted at the height of the HIV/AIDS crisis in the early 1990s. The findings of a Uganda Law Reform Commission national survey on the imposition of the death sentence for sexual offences, including defilement, had ranged from retention of the death penalty for the sexual abuse of children under 10 years of age and life imprisonment.

He pointed out that, while there had been 445 convictions for defilement, none had carried a death sentence.

21. Most aggravated robberies had involved the use of guns; about 65 per cent of those convicted had used, or threatened to use, a firearm. Aggravated robberies accounted for 27.3 per cent of all prisoners on death row. A total of 462 persons were still on death row, 441 males and 21 females. Of that total, 326 had been convicted for murder, 126 for aggravated robbery, 7 for treason, 2 for kidnapping and intent to murder and 1 for cowardice in action while in the service of the National Resistance Army. The most recent execution had taken place on 29 April 1999, when 28 prisoners had been executed.

22. With a view to abolishing the death penalty, his Government had established the Odoki Commission in 2000 to assess public opinion on the matter. The majority view at the time was that the death penalty should be retained for the most serious crimes, such as murder, aggravated robbery, rape and defilement. The Constitutional Review Commission was currently considering appeals by certain sectors of society, including the Uganda prison service, for abolition of the death sentence. A group of advocates was also challenging the death penalty in the Constitutional Court (Kigala Suzan and others v. Attorney-General of Uganda).

23. **Mr. Ssonko** (Uganda), referring to question 13 on the list of issues, said that the allegations of extrajudicial executions were completely false. The Uganda People's Defence Forces operated under very stringent laws, particularly in areas like northern Uganda. Those laws left no room for such extrajudicial executions to be carried out with impunity. An army officer accused of committing a service offence was thoroughly investigated and, if sufficient evidence could be gathered, tried under the military judicial system.

24. **The Chairperson** said that, although some of the delegation's responses had been brief, he was certain that a fruitful discussion would ensue and clarify any remaining questions.

25. **Mr. Shearer** agreed with the Chairperson that the responses had been brief, particularly to questions 1 to 4 on the list of issues. With regard to question 1, it would be helpful if the delegation could specify those cases in which the Uganda Human Rights Commission had invoked provisions of the Covenant. Had the Covenant been cited in the ordinary domestic courts, where its effect was most likely to be felt at the grass-roots level, and, if not, did that signal a need for further education in the judiciary and the legal profession? In addition, he would appreciate information on torture cases in addition to what was given in paragraph 148 of the report.

26. Referring to question 2 on the list of issues, he asked whether the Human Rights Tribunal referred to in the State party's reply was actually the Uganda Human Rights Commission. Neither the 1997 Uganda Human Rights Commission Act nor the Constitution seemed to authorize the Commission to function as a court that actually heard complaints. He would appreciate clarification of the State party inclusion of suspected rebel activities in its list of human rights violations. The execution ordered by the Board of Inquiry in the murder of Irish priest Declan O'Toole was surprising in view of the delegation's assertion that no executions had been carried out in Uganda since 1999. Was the Board of Inquiry that had imposed the sentence a military court, and could a pardon or appeal be sought in military convictions?

27. Referring to question 3 on the list of issues, he said that he would appreciate further details on how the Chain Linked Initiative would help to expedite trials.

28. Lastly, referring to question 4, he asked whether the 1986 Commission of Inquiry still existed or had been superseded by the Uganda Human Rights Commission.

29. **Mr. Scheinin**, noting with satisfaction the broad mandate of the Uganda Human Rights Commission, including its judiciary powers, requested clarification of its degree of independence from the executive branch, considering that the Attorney-General was a member of the Commission and could attend its meetings.

30. Referring to question 6, he enquired whether all elements of what could be regarded as an act of terror were accurately defined in Ugandan legislation, and whether they were specific enough to qualify as *nullem crimen* under article 15 of the Covenant. It would also be useful to know the criteria for determining membership in a terrorist organization (short of the commission of a terrorist crime).

31. Turning to question 8 and the extent to which traditional practices impeded implementation of the Covenant, he asked why the Domestic Relations Bill before Parliament did not take a firmer approach towards outlawing polygamy. Referring to question 10, he said that it would also be interesting to see whether the Domestic Relations Bill would have any impact on the problem of female genital mutilation, which remained widespread in certain parts of Uganda. More generally, he wondered whether the practice was banned by criminal legislation or the State party relied merely on education and advocacy to combat it.

32. Referring to question 13, he requested the delegation to confirm whether there was a trend towards increased prosecution of crimes punishable by the death sentence, as some NGOs were alleging. It would be crucial to know which crimes carried a mandatory death sentence with no alternative, which, in the Committee's view, constituted arbitrary deprivation of life. While the delegation denied allegations of extrajudicial executions in northern Uganda, it should nonetheless clarify whether extrajudicial executions had ever been carried out within the State party's territory, particularly by the Lord's Resistance Army. According to information provided by NGOs, government authorities had been responsible for extrajudicial executions as well. In that connection, he enquired whether any extrajudicial executions had taken place in the raid of Gulu Prison on 16 September 2002, and about the shoot-on-sight policy declared under Operation Wembley in July and August 2002. Had law enforcement officers resorted to the deadly use of weapons before bringing charges? Lastly, with regard to the right to life, he would appreciate updated information on the coverage of retroviral treatment for HIV/AIDS patients in the context of the World Health Organization's "3 by 5 Initiative" (3 million people living with HIV/AIDS by 2005).

33. **Mr. Glèlè Ahanhanzo** expressed concern about the slowness of the justice system in Uganda, especially given the increasing crime rate, the imposition of hard labour on all detainees, including those who should be exempt and with the lack of progress in the strengthening of democracy and political life. He requested information about the nature and functions of the Uganda Human Rights Commission: he enquired for example, whether it had real judicial powers. He also would like information about its activities since its establishment, including the types of violation it heard, in particular, violation of the right to health care for those suffering from HIV/AIDS and human rights violations by the security forces. He also wanted to know the nature of the relationship between the Commission and the legal authorities.

34. More details would be welcome on the work of the Amnesty Commission created by the Amnesty Act of 2000, especially with regard to the Lord's Resistance Army (LRA) and the Allied Democratic Front (ADF). He also requested information on the number of prosecutions of cases involving the death penalty and their outcomes. In that context, he noted that persons sentenced to death often spent intolerably long periods on death row, for example Mr. Abdullah Nassur, who had been pardoned after serving 20 years on death row.

35. **Mr. Bhagwati** wondered whether the Human Rights Commission had powers equivalent to a court or simply served in an advisory role. He would like information on the number of complaints it had reviewed, the nature of those complaints and any action taken. He asked whether complainants had a right to a hearing before the Commission and whether the Commission had the power to order compensation and remedy a situation created where there had been a human rights violation on the part of a State official. He expressed concern about persistent reports of the use of torture by the police Violent Crime Crack Unit and wondered what steps were being taken to eliminate that practice, in accordance with article 7 of the Covenant.

36. Noting the large number of persons living with HIV/AIDS, he requested information on steps the State party was taking to ensure that they had access to anti-retroviral drugs, which were quite expensive. It was gratifying that there had been no executions of persons sentenced to death since 1999 but he found it intolerable to allow prisoners to languish in death row year after year; he asked what was the average time spent by a prisoner on death row. Since no one had in fact been executed for a number of years, he urged the State party to abolish the death penalty.

37. He would appreciate more statistical data on the representation of women in the judiciary, including the Appeals Courts and the Supreme Court, the legal profession in general and the civil service, as well as

information on how the members of the higher courts were appointed. He wondered if there were any checks or balances on the Government's power to make such appointments and whether they were made or reviewed by an independent body. Additionally, he wanted to know the length of the term of office of judges, whether they could be removed before the end of their term and if so, how, and in general what safeguards existed to protect the integrity of the judicial system.

38. **Mr. Yalden** said that the Human Rights Commission, on paper at least, had extensive powers, but requested more detailed information on its work. The report on cases heard provided during the delegation's oral responses to the list of issues had included mostly military and political cases; he wondered if cases of a different nature also came before the Commission. It would be useful for the Committee to see a copy of the annual report which the Commission was required to submit to Parliament. In general, the State party should provide more information on the procedures and programmes mentioned in its periodic report.

39. **Ms. Wedgwood** noted that article 33(f) of the Ugandan Constitution prohibited laws, cultures, customs or traditions which were against the dignity, welfare or interest of women. She therefore wondered what actions other than awareness-raising activities, including prosecutions, had been taken to combat the practice of female genital mutilation. She also recalled that it was the position of the Committee that a State party's obligations under the Covenant also applied to actions by its military forces in areas under their control and wondered whether there was any domestic mechanism to investigate reports of civilian casualties resulting from actions by the Ugandan military in the Democratic Republic of the Congo. Finally, noting that the activities of the Lord's Resistance Army had been referred to the International Criminal Court, she wondered why domestic institutions were unable to deal with that situation.

40. **Mr. Ando** requested more information on domestic violence and female genital mutilation. He expressed surprise, for example, that in its oral responses (question 9), the delegation had stated that the media, affluence and co-habitation contributed to domestic violence. He welcomed the development of the National Strategy on Gender-based Violations and requested details on the role of the police and the work of the Family Protection Unit, in particular in promoting reconciliation between the parties involved. With regard to female genital mutilation (question 10) he again wondered how poverty could be a contributing factor and requested more information on efforts to provide financial incentives for those who abandoned the practice.

41. **Sir Nigel Rodley** requested information on the number of death sentences and executions carried out since 1999 within the military justice system. He expressed concern at the use of summary court martial and inquired about the legal status of the inquiry into field court martials which had followed the killing of Father O'Toole and two other persons. He asked how the lack of appeals procedure and court-imposed capital punishment could be reconciled with article 6 of the Covenant on the right to life and article 14, paragraph 5, of the Covenant on the right to judicial review. He was concerned in particular by the inquiry's finding that constitutional guarantees were not applicable to field court martials.

The meeting was suspended at 5.10 p.m. and resumed at 5.30 p.m.

42. **Mr. Byamukama** (Uganda) said that in its 2001 report, entitled "Protectors or Pretenders?", the Human Rights Watch had cited the Uganda Human Rights Commission as one of the most effective human rights bodies on the African continent. On pages 24 and 25 of the delegation's replies to the Committee's list of issues, there was a list of complaints heard by the Uganda Human Rights Commission and in most of those cases the Covenant or the Committee itself had been mentioned. The Commission was not just an advisory body: it received complaints, undertook inquiries into cases and ordered compensation. The Commission's powers were derived from article 53 of the Constitution. It had replaced the Commission of Enquiry into Human Rights Violations. The Human Rights Commission was an independent body, whose members were appointed by the President and approved by Parliament. While members of the Commission served for six years, the tenure of the appointing authority was only five years.

43. The Human Rights Commission had quasi-judicial powers, as provided in the Constitution. However, there was no conflict between national legal bodies and the Commission because article 52 of the Constitution gave the Commission a different mandate from other constitutional bodies. The Commission had

the function of a tribunal, but it also provided mediation and conciliation services. Those services were free and were open to the most disadvantaged citizens.. In cases where the Commission had no jurisdiction over the complaint, it referred it to the competent body.

44. **Ms. Zaale** (Uganda) said that article 50 of the Constitution gave courts the right to hear complaints of human rights violations and the Covenant had occasionally been invoked by domestic tribunals. On question 8 of the list of issues (female genital mutilation), he noted that article 37 of the Constitution stated that every individual had the right to belong to or to practise any cul.ure or creed, although it was important to understand that female genital mutilation was not widely practised in Uganda. Article 33, paragraph 6, on the other hand, prohibited the practice of any cultures or laws that affected the welfare or status of women. The Domestic Relations Bill addressed the practice of female genital mutilation, in an effort to resolve the problem, given those seemingly contradictory provisions of the Constitution. The Government had decided to embark upon a programme of sensitization before abolishing the practice altogether. Furthermore, article 28, paragraph 7, of the Constitution stated that an individual could not be convicted of an act that did not constitute a criminal offence at the time it took place. Thus, female genital mutilation could not be considered a criminal offence since the Penal Code did not recognize the practice. The Government would take steps to rectify that, anachronism.

45. **Mr. Kamya** (Uganda) said that Operation Wembley was implemented in the wake of a period of violent crime, during which 48 people were killed. As provided in article 212, the police called on other national agencies to help them reduce the level of crime. It was because the suspects were so violent that the police response required the use of live ammunition, although no state of emergency was declared. The force used by the police was proportionate to the force it encountered. The operation's "shoot on sight" policy gave police the power to shoot an individual who did not surrender; it was considered a form of self-defence. However, those who surrendered could not be denied the right to a fair trial in the courts.

46. In response to an outcry from civil society, the operation was placed under full police control and the Violent Crime Crack Unit was established, in which any officer suspected of engaging in torture would be brought before the courts or sent to a police disciplinary court. Domestic violence was being dealt with by the special Childcare and Family Protection Unit. Members of that unit were trained in counselling and mediation and taught to handle sensitive issues. Although many wives reported crimes of domestic violence to the police, they often withdrew the complaint because the husband was the family provider. However, if abuse persisted and threatened the life of the woman, he would be taken to court.

47. **Mr. Kakooza** (Uganda) said that the Domestic Relations Bill had established a series of criteria governing polygamy. The man must prove that he was able to maintain all the wives financially, provide separate homes for them, afford them equal emotional and sexual treatment and he must seek the consent of his other wives. Those provisions made polygamy almost impossible. With regard to the steps the Government was taking to deal with HIV, he pointed out that the Government was applying for the licences of the drugs to treat HIV. In accordance with World Trade Organization regulations, those drugs could then be manufactured in Uganda. The United States Government had also provided assistance and HIV drugs were already practically free.

The meeting rose at 6 p.m.

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Summary record of the 2178th meeting
Held at Headquarters, New York, on Tuesday, 23 March 2004, at 10 a.m.

Chairperson: Mr. Amor

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Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Initial report of Uganda (*continued*)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of this document* to the Chief, Official Records Editing Section, room DC2-750, 2 United Nations Plaza.

Any corrections to the record of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

04-28095 (E)

The meeting was called to order at 10.05 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Initial report of Uganda (*continued*) (CCPR/C/UGA/2003/1)

1. *At the invitation of the Chairperson, the delegation of Uganda took places at the Committee table.*

List of issues (*continued*) (CCPR/C/80/L/UGA)

2. **The Chairperson** invited the delegation to continue addressing the oral questions posed by the members of the Committee.

3. **Mr. Kakooza** (Uganda), responding to a question about the number of female judges in Uganda's superior courts, said that one of the six Supreme Court judges, three of the six Court of Appeal judges and 8 of the 35 High Court judges were women. In addition, the presiding judge of the Court of Appeal, who also held the title of Deputy Chief Justice of Uganda, was a woman.

4. The Constitution set out the procedure for appointing members of the judiciary. In accordance with the relevant provisions, the Judicial Service Commission made recommendations to the President, who then, subject to Parliamentary approval, appointed the selected candidates. Article 144 of the Constitution laid down the maximum length of tenure for Ugandan judges and also provided for their removal from office on grounds of incompetence, inability to perform their functions or misconduct.

5. Turning to the issue of early and forced marriages (question 28), he said that, pursuant to the Constitution, only men and women over the age of 18 years were permitted to marry and found a family and the consent of both parties was required. Those provisions were also included in the Domestic Relations Bill, which was currently before Parliament. Nevertheless, he acknowledged that forced and early marriages still took place, particularly under customary and Islamic law.

6. **Ms. Tindifa Mirembe** (Uganda) said that the Chainlinked Initiative was designed to take a sector-wide approach to the reform of the legal system with a view to increasing the efficiency of the processing of criminal cases by means of coordination and cooperation between all interested parties, inter alia, police and prison officers and members of the judiciary. Part of the initiative involved streamlining the scheduling of court cases in order to reduce the length of time suspects spent on remand. and the results of a pilot scheme in one district had wn that remand times for serious offenders had been reduced from five to around two years. In addition, at each of its sessions, the High Court was now dealing with over 70 per cent of its caseload. Following the implementation of the Chainlinked Initiative, a number of best practices had been adopted, inter alia, limiting the scope for adjournment of criminal cases and ensuring that all investigations were completed before criminal trials were opened.

7. **Mr. Beekunda** (Uganda), in response to a question about domestic violence, said that violence against family members could take the form of economic, physical, social and psychological abuse and that poverty, cohabitation and the media could exacerbate the problem in a number of ways. For instance, violent disputes could arise over the distribution of economic assets, including inheritance, among family members. Men, who often owned the lion's share of any such assets, could become the perpetrators of violent acts against their wives and, particularly in rural areas, victims were reluctant to denounce their husbands for fear of divorce or abandonment. However, the Government was engaging in awareness-raising activities designed to encourage aggrieved parties to speak out against their aggressors, which had had some success.

8. **Mr. Sekabembe Nsalasatta** (Uganda), responding to an inquiry about the emphasis on the prosecution of individuals accused of capital offences, said that, since 1996, there had been an increase in the number of crimes of all types reported to the authorities. That increase could be attributable to greater efficiency on the part of the police force or increased public confidence in the law enforcement authorities. In any case, the court machinery in Uganda had been unable to cope with the increased workload, hence the growing numbers of prisoners on remand. In 1999, a donor-funded project had been launched in an attempt to clear the backlog of capital cases.

9. The death penalty was only imposed in cases of murder, aggravated robbery, treason and acts of terrorism which had resulted in deaths. The

Constitutional Review Commission was currently debating the abolition of the death penalty. However, in order to secure public support for any proposed abolition, the Government would have to carry out awareness-raising activities.

10. **Mr. Ssonko** (Uganda), with reference to a question about field courts martial, wished to point out the existence of a number of other army courts where the accused had the right of appeal, including the Court Martial Appeal Court, the highest appellate court within the Ugandan People's Defence Forces (UPDF). Field courts martial were normally used during operations, in situations where it was not practical to bring the suspect before an ordinary court. The cases heard by field courts martial were those in which the evidence spoke for itself and the accused had no defence. In such cases, there was no right of appeal. Lastly, he informed the Committee that a draft law relating to UPDF was currently before the Ugandan Parliament. Any elements of that draft law found to conflict with the Constitution or other legal instruments would be altered.

11. **Mr. Butime** (Uganda), responding to a question about counter-terrorism measures, said that Uganda had passed the Anti-Terrorism Act in response to the events of 11 September 2001. According to section seven of the Act, contained in the annex to the report, those responsible for prosecution must prove that suspects were members or associates of organized terrorist groups.

12. As far as the activities of UPDF were concerned, he said that soldiers serving in Eastern Congo who had committed offences had been brought back to Uganda to stand trial. He confirmed that UPDF forces had not executed any members of the Lord's Resistance Army (LRA). The Ugandan Government had called for Joseph Kony, the leader of LRA, to be indicted by the International Criminal Court rather than initiating domestic proceedings against him because his operations were conducted on an international scale.

13. **The Chairperson** invited the delegation of Uganda to respond to questions 14 to 24 on the list of issues.

Prohibition of torture; obligation to treat detainees humanely (arts. 7 and 10)

14. **Mr. Kamya** (Uganda), referring to question 14, said that article 218 of the Penal Code criminalized the excessive use of force and section 45 of the Police Code prohibited the excessive use of force of any kind. The army as an institution did not condone torture, and individual soldiers who committed acts of torture were held accountable. The Human Rights Commission was responsible for dealing with alleged human rights violations, particularly cases of torture, and a list of the cases it had handled during the reporting period could be found on pages 24 to 26 of the written replies. When Government officials were found guilty of human rights violations, the Attorney General, as the representative of the Government, was responsible for compensating the victims.

15. With regard to human rights training for army and police officials, he said that the police force had developed a human rights training manual containing a whole chapter on the appropriate use of force and firearms. Similar manuals were being designed for the army and human rights issues had been introduced into the curriculum of the Uganda Prisons Training School. The Human Rights Commission, in collaboration with the UPDF Human Rights Desk, had carried out extensive training of officers at all levels, including in the field.

16. **Mr. Sekabembe Nsalasatta** (Uganda), in response to questions 15 and 16, said that violent offences included aggravated robbery, murder and rape. Individuals found guilty of those offences were not subject to solitary confinement while in prison, but were held in association wards in maximum security facilities. Nevertheless, the Prisons Act did provide for solitary confinement as a temporary measure for offenders who had become or had threatened to become violent and insane prisoners who were awaiting transfer to a mental hospital and for disciplinary purposes. The maximum duration of solitary confinement was 14 days.

17. The draft Prisons Bill 2001 had been approved by the Cabinet and was currently awaiting consideration by Parliament. Although it contained a provision outlawing corporal punishment, that practice had already been declared illegal and inhuman by the Supreme Court.

18. **Mr. Kamya** (Uganda), referring to question 17 on the list of issues, said that since ratifying the Convention on the Rights of the Child, in 1990, Uganda had taken several decisive steps to improve the administration of juvenile justice. Firstly, it had

introduced the Children's Act in an effort to reform and strengthen laws on children. The Act notably addressed issues such as the care and protection of children and the support provided by local authorities, and established a Family and Children Court. It also stipulated that children should be detained only as a last resort, and encouraged the authorities to divert cases involving children from the main justice system. A Secretary for Children's Affairs had been appointed at all levels of local government, and all Grade 2 Magistrates' Courts had been designated as family and children courts. A juvenile justice system was thus in place, and juvenile-detention facilities were being rehabilitated. Under the Children's Act, no child could be detained with an adult person or remanded in an adult prison. Steps had also been taken to strengthen community policing, establish police child-reception centres and rehabilitate juvenile remand centres. However, efforts to establish child-reception centres continued to be thwarted by poor infrastructure.

19. **Mr. Nsalasatta** (Uganda), referring to question 18, said that prison conditions were characterized by overcrowding, budgetary constraints and low staffing levels. However, the Government had taken a number of measures to address those problems. It had introduced community service in an effort to ease prison congestion, and earmarked funds for initiatives aimed at increasing food production. The budget for the prison medical service had been increased by 20 per cent and water-borne toilets were being constructed as part of efforts to improve prison sanitation. Eight new female wards had been built with the help of donor partners, and the government was committed to the recruitment of new staff. In an effort to reduce the backlog of cases and speed up the system, the Government planned to increase the number of judges and magistrates, open new courts and improve criminal investigation procedures, among other measures. Finally, the police were establishing model police stations, designed to implement a rights-based approach to arrest and detention.

20. **Mr. Butime** (Uganda), referring to the second part of question 18, noted that safe houses had been established during the period 1996-1997 in response to acts of terrorism, but had been closed after terrorism had been contained. There were no longer any safe houses in Uganda, and terrorist suspects were taken to official police stations.

Prohibition of slavery, servitude and forced or compulsory labour (art. 8) and protection of children (art. 24)

21. **Mr. Kacwa** (Uganda), referring to question 19, on child employment, noted that Uganda had ratified two key Conventions of the International Labour Organization (ILO): the Worst Forms of Child Labour Convention, 1999 (No. 182), and the Minimum Age Convention, 1973 (No. 138). The Government had also been implementing a national programme on the elimination of child labour in collaboration with the International Programme on the Elimination of Child Labour (ILO-IPEC), and had taken steps to make the population aware of the negative effects of child labour. Commercial sexual exploitation of children had been identified as one of the worst forms of child labour.

22. **Mr. Ssonko** (Uganda), referring to question 20, noted that most abducted children were rescued during encounters between the Uganda People's Defence Forces (UPDF) and the Lord's Resistance Army (LRA). They were then taken to a Child Protection Unit (CPU), where they were given medical attention and clothes, and transferred to a rehabilitation centre where they received trauma counselling and psychosocial support. Concerning the situation in the armed forces, army policy did not permit the recruitment of children. Applicants must provide an introductory letter from their local council, as well as references. However, it was often difficult to verify an applicant's age. The Government had established special elementary schools to help the former child soldiers readjust to the education system. There were plans to set up similar schools in northern Uganda, but lack of funds remained an obstacle. Certain non-governmental organizations had, however, established vocational skills centres for such children.

Right to liberty and security of person (art. 9)

23. **Mr. Kamya** (Uganda), referring to question 21, noted that detainees must be allowed reasonable access to next-of-kin, lawyer and physician. With respect to question 22, he said that under Ugandan law, officers and private individuals could arrest an individual, without a warrant, if they had reasonable grounds to suspect that he had committed, was in the act of committing or might commit an offence. However, the practice of arresting suspects before conducting preliminary investigations was discouraged, and

officers engaging in such practices were liable to disciplinary action.

Freedom of movement and prohibition of arbitrary expulsion of aliens (arts. 12 and 13)

24. **Ms. Kisembo** (Uganda) noted that Uganda's National Policy for Internally Displaced Persons (IDPs) was still in draft form, undergoing a budgetary evaluation, but would hopefully become part of official Government policy by April 2004. A fundamental aspect of the policy, which would conform to United Nations Guiding Principles on Internal Displacement, was the recognition that IDPs should enjoy, in full equality, the same rights and freedoms as all other persons in Uganda. Meanwhile, human rights committees had been set up at the district and sub-county levels to handle cases of alleged human rights violations, and efforts had been made to raise people's awareness of the issue. Due to lack of funding and capacity-building, the country's disaster-management system was more responsive than preventive. Lastly, the Ugandan office of the United Nations High Commissioner for Refugees (UNHCR) had refused to assist IDPs in Uganda, and the problem therefore required a concerted effort.

Right to a fair trial (art. 14)

25. **Ms. Zaale** (Uganda), referring to question 24, said that Uganda's prisons did indeed suffer from overcrowding, due in particular to the high number of detainees on remand. The prison lacked resources such as transportation and communications equipment, and criminal investigations officers lacked the necessary training. The Government had responded by increasing the number of magistrates and attorneys and by implementing crime-prevention strategies. Since the passage of defilement laws in 1990, there had been a steady increase in the number of detainees and convicted persons. A Local Council Courts' Bill had been introduced with a view to improving the efficiency of dispute resolution at the local level, and the Ministry of Local Government had developed a comprehensive training manual for Local Council Courts, in an effort to improve the adjudication of cases. Moreover, the judiciary had issued case-management guidelines that included time frames for case completion and limitations on adjournments. It had also issued new court procedures for case management, which discouraged multiple and frequent adjournments in criminal matters and provided that sentencing must take place within 60 days of conviction.

26. **Sir Nigel Rodley** said that the overall responses had been less forthcoming than the State party's report. He wondered whether that was because much of the information in the report had come from reports of the Uganda Human Rights Commission for 1997, 1998 and 1999. Those were the latest reports available, and he regretted the lack of access to more recent information.

27. According to paragraph 147 of the State party's report there had been many cases of torture in police cells and military detention centres as recently as 1999. Yet the response to question 14 on the list of issues stated that torture was not institutionalized in the Uganda Police Force or the army, and that any incidents were investigated and harshly punished. Only one case of death under torture had been reported. However, a letter dated 5 March 2004 from Human Rights Watch addressed to the Chieftaincy of Military Intelligence (CMI) of the Uganda People's Defence Force (UPDF) cited many cases of detention and serious torture or ill-treatment by the UPDF, in which, in addition, no respect for constitutional arrest and detention rules had been shown. He considered such information to be of particular interest since, according to the State party, the army had no powers of arrest and detention. He wished to know whether, since the submission of the report, military barracks had been gazetted as police detention centres, and whether the illegal practice of detention in "safe houses" — eliminated in 2000 — had reemerged. He requested further information on allegations received by the Uganda Human Rights Commission about detention by the military; interrogation by the CMI; in military premises; in "safe houses"; and without the constitutional limitations.

28. He was pleased to note that there was a mechanism in place whereby victims of illegal detention and torture might file complaints with and be awarded compensation by the Uganda Human Rights Commission. In many cases, however, the awards had not been paid. He wished to know whether monetary compensation was the only disposition of the Commission, or if there had been any prosecutions in respect of the illegal detention and torture for which the awards had been ordered.

29. Turning to the topic of prisons, he requested information on the maximum period of solitary confinement for disciplinary purposes, and whether the period was renewable. He wished to know on what grounds a person could be so confined, who took the relevant decision and whether the decision could be appealed.

30. He said he appreciated the delegation's openness on the subject of prison conditions. Given the magnitude of the problem, the Government should make it a priority to remedy the situation. There was a wide discrepancy between prison capacity and population, and the Uganda Human Rights Commission had described the overcrowding "as among the worst anywhere". With respect to the statistics provided in paragraph 307 of the report, he requested further information on the number of detainees in any one cell at any time when awaiting trial.

31. He requested more information on the alleged forced entry into the Gulu detention centre in September 2002 by the UPDF, and the ensuing killing of one person and the abduction and serious ill-treatment of others, and on any measures taken against the perpetrators.

32. **Mr. Khalil** said that 78 per cent of the population of Uganda consisted of children, and 50 per cent of the population consisted of minors under 18 years of age. That left many children vulnerable to social and economic exploitation in a society where the laws and regulations did far too little to protect them. The Government had taken steps to implement legislation governing the minimum age for the employment of children, and he commended the campaign begun under that legislation to educate the population and raise awareness of the negative effects of child labour. He wondered, however, whether that was enough to combat the problem. He requested information on other legislative measures taken, such as penalties for employers. With regard to economic and sexual exploitation of children, he would be interested to know the tangible results of the pilot projects mentioned in the written replies.

33. The issue of child soldiers was disturbing. Although 54 child soldiers had been handed over to UNICEF in 2000, the numbers of children abducted by the Lord's Resistance Army (LRA) were alarming. A 1998 report by UNICEF, recently cited by the International Labour Organization (ILO), had stated that up to 1,400 children had been abducted in the north of the country. He appreciated the difficulty of the situation, but wondered whether the Government had been making sufficient efforts to narrow the scope of the abductions.

34. **Mr. Castillero Hoyos** said that he was interested to know more about freedom of movement. Referring to paragraph 337 of the State party's report, he asked for a definition of "security zones" in the context of restrictions to places of residence, and how such restrictions could be considered acceptable under article 2 of the Covenant. With reference to the information that only nationals enjoyed the right to freedom of movement under the constitution, he asked whether the Government intended to amend the constitution to bring it into line with article 2 of the Covenant. He also requested clarification on the denial of passports "in the public interest". Paragraph 364 of the report affirmed that residence permits and entry visas could be cancelled at any time, without reason or right of appeal. Paragraph 374 cited a similar practice with regard to refugees. He asked how that practice, in either case, could be justified under article 13.

35. **Mr. Solari Yrigoyen** said that the section of the report devoted to article 18 made no mention of joining the military. He would be interested to know whether military service was compulsory or whether service in the armed forces of the State was a profession, without a draft. If military service was compulsory, he wished to know whether conscientious objection was permitted and, if so, how it was exercised.

36. **Mr. Shearer** requested more information on training programmes for judges, magistrates and the legal profession. He wondered whether the Uganda Human Rights Commission had planned any such programmes relating specifically to the implementation of the Covenant. He would be interested to know whether the reason why there were so few communications under the Optional Protocol was because its terms were not widely known.

37. He requested clarification on the lack of a right to appeal and on the death penalty in courts martial, and on the functioning of such courts. The delegation had stated that field courts martial were different to others, inasmuch as there was no right of appeal in a "clear case". He requested more information, in writing if necessary, regarding any limitations to the right to

appeal, and whether an armed forces act or a military justice act existed that provided for such limitations.

38. **Mr. Kälin**, referring to practices cited in paragraph 280 of the report, including the caning of prisoners as a disciplinary measure, asked whether there was any pending legislation relating to the abolition of corporal punishment and whether it would cover prison disciplinary measures, and requested clarification of the term "penal diet".

39. He was pleased to hear that United Nations principles were used to guide policy relating to internally displaced persons, but was concerned by the statement in paragraph 342 of the report to the effect that 95 per cent of such persons were living in protected camps. He requested clarification on the camps and how they were protected. Recent incidents led to the conclusion that the UPDF presence did not offer sufficient protection in the face of the LRA, which had a policy of attacking the camps. He would be interested to know why past measures to protect people in the camps had failed and what future measures the Government contemplated, in compliance with article 6, to put a stop to such attacks.

40. **Mr. Bhagwati** said that, like Mr. Khalil, he would like more information on child labour, in particular what penalties, if any, existed to prevent the employment of underage children. He asked whether any distinction was made between hazardous and non-hazardous employment, and what steps had been taken to implement the ILO Worst Forms of Child Labour Convention, 1999 (No. 182). He also wondered whether primary education was compulsory, which might help to reduce child labour.

41. He would be interested to know whether judges were trained in law, human rights and Covenant rights, and whether there was a school devoted to training judges and prosecutors. He noted that paragraph 292 of the report mentioned a long delay before cases came to court. He requested information on the average length of such delays, and asked whether any measures were envisaged to deal with the backlog such as the establishment of village courts or the holding of summary trials for smaller offences.

42. Further information on the legal aid system described in paragraph 391 would be welcome, including statistics on the number of cases and whether aid was provided only in cases of life imprisonment. He would be interested to know how the system worked, including whether lawyers were provided and, if so, how they were paid.

43. He expressed concern at the information that a confession could be recorded before an Assistant Inspector of the police, questioning the wisdom of allowing so much authority, without safeguards, to junior officers. If there were safeguards, he would be interested to know what they were. He wondered how much time could elapse before a suspect was taken before a judge, and about the level of adherence to the guidelines.

44. **Mr. Depasquale** said that although the Uganda Police Statute was modelled on the British system, it did not provide for an independent Police Board to review complaints of misconduct, and he wondered whether such an institution was envisaged. It appeared that the use of torture by police at the interrogation stage to extort a signed confession of guilt was not rare. In the model police stations to be established, it might be useful to have audio-visual recording in interrogation rooms.

45. **The Chairperson** invited the delegation to address questions 25 to 30 on the list of issues (CCPR/C/80/L/UGA).

Right to privacy (art. 17)

46. **Mr. Butime** (Uganda), in response to question 25, said that the Constitution of Uganda prohibited unlawful searches. However, a search without a warrant was allowed under the Police Statute if a crime was in progress or was evidently about to be committed. Such a search was lawful and was not incompatible with the Constitution or with article 17 of the Covenant.

Freedom of opinion and expression (art. 19) and freedom of assembly and association (arts. 21 and 22)

47. **Ms. Kisembo** (Uganda), in response to question 26 on harassment of independent journalists and suspension of publication of newspapers, said that the Supreme Court of Uganda in Appeal No. 2 of 2002 involving *The Monitor* newspaper had held that freedom of expression was a basic right and that section 50 of the Penal Code Act making publication of false news a crime was unconstitutional. That provision had been amended accordingly. There was no provision for suspension of publication. Pornographic material was prohibited. If the Government found

material offensive, it could pursue the individual journalist for professional misconduct. With regard to access to government information, article 41 of the Constitution and section 4 of the Press and Media Act, ensured journalists' access to information subject to laws regarding secrecy and security. The Government was drafting an access to information bill that was expected to become law in April 2004.

48. **Mr. Kamya** (Uganda), in response to question 27, said that article 29 (d) of the Constitution guaranteed freedom of assembly. However, that freedom was not unlimited. Under the Police Statute, the police were allowed to prevent an assembly if they reasonably suspected that it might turn violent or cause a breach of the peace, and if an assembly did turn violent, the police could order the participants to disperse. With regard to political parties, the Constitution put restrictions on their activities as long as the Movement political system was in force. Under the Political Parties and Organizations Act political parties were required to register. The activities of registered parties were not interrupted, but the police were required to break up the meetings of unregistered parties.

Right to family (art. 23)

49. **Mr. Butime** (Uganda) noted that question 28 on polygamy and early marriages had been answered in the earlier discussion.

Rights of minorities (art. 27)

50. **Mr. Kacwa** (Uganda), in response to question 29, said that the rights of ethnic and religious minorities were grounded in articles 32 and 36 of the Constitution. With the help of the Government of Sweden, Uganda was establishing an Equal Opportunities Commission to protect the rights of minorities. The Commission was to be on the Board of the National Planning Authority. With the support of the Netherlands, a national policy on equal opportunities was being developed, which would apply a rights-based approach to planning and programming.

Dissemination of the Covenant

51. **Ms. Awino** (Uganda), in response to question 30 on the training of the judiciary, law enforcement officers and other public officials, said that one of the responsibilities of the Uganda Human Rights Commission was to raise awareness about human rights through training and workshops conducted by its Department of Education Research and Training. So far it had carried out four training workshops for a total of 195 officers of the Uganda People's Defence Forces and had conducted four human rights workshops for officers of the Uganda police force. It had also helped to prepare a human rights training manual for the police. There were plans to train members of the judiciary, but the work with law enforcement officers had taken precedence.

52. Owing to a shortage of resources, it had not been possible for the Government to publish human rights reports other than by posting them on the Internet. The reports were, however, subjected to public scrutiny before submission.

53. **The Chairperson** invited the Committee to put further questions to the delegation concerning their replies to the list of issues.

54. **Mr. Castillero Hoyos,** noting that according to paragraph 417 of the report the prosecutor could authorize a search without a search warrant of the premises or home of a person accused under the Prevention of Corruption Act, said that he would like to have more information concerning the procedure and the frequency with which it had been used and an explanation as to how it was compatible with article 17 of the Covenant. He would also like the State party to elaborate on the cases in which, according to paragraph 420, the right to privacy had been interfered with in the interest of the State. He would appreciate more information on the prohibition of 22 August 2003 promulgated by the Law Council against the participation of attorneys in political activities. He would also like to know whether the anti-terrorism act would limit freedom of expression and the press. Lastly, he would like the State party to explain how the restriction on the activities of political parties under the Movement system could be considered to be compatible with article 22 of the Covenant.

55. **Mr. Khalil** said that the delegation was to be commended for its candid written replies to question 28 on polygamy and forced and early marriages. The Committee understood that it was difficult to eradicate custom merely by passing laws. However, early and forced marriages in particular were a serious violation of the rights of girls and women. In the case of minors, even their agreement to marry could not be considered

a valid consent. He hoped that the education and advocacy programmes undertaken would improve the situation. The delegation had said that forced marriages were not easily detectable unless reported to law enforcement agencies. He wondered whether the State party might not institute more systematic mechanisms for discovering the culprits and prosecuting them.

56. Chapter 215 of the Divorce Act provided different grounds for divorce for men and women. The proposed domestic relations bill was expected to change the law about polygamy, and he wondered whether it would also amend the discriminatory provisions on grounds for divorce.

57. **Mr. Solari Yrigoyen** remarked that the State party had said that the right of freedom of association under article 22 of the Covenant was the most controversial in Uganda. Worse yet, that right seemed to be severely restricted in Uganda and had been nearly abolished in the political arena under the Movement system. The provisions of the Constitution in that regard were contradictory. It was known that problems had arisen from the implementation of the Political Parties and Organizations Act. The Constitutional Court had found three sections of the Act unconstitutional. When the Democratic Party had held a meeting to celebrate the decision, police had broken up the meeting. He would like to know what political parties existed, how many were registered or had been denied registration and what real rights they had. History had shown that political parties might officially exist but not be allowed to function in any real sense or to put forward candidates. Moreover, there appeared to be restrictions on the movements of some opposition candidates, which was a violation of the Covenant and constituted political persecution. He would like to know whether it was allowable to criticize the President or the platform of the Movement, the presidential party.

58. **Mr. Glélé Ahanhanzo** said that he would be interested to know the precise term in the other languages of Uganda for what was called the bride price in paragraph 489 of the report. He assumed that it was similar to the dowry in neighbouring cultures. He would like to know to what extent the practice was in accord with Ugandan national law. Moreover, paragraph 498 of the report said that Christian marriage could be dissolved by a decree of divorce pronounced by the Chief Magistrate's Court or the High Court, and he wondered whether that was in accordance with canonical law. He would appreciate having a few examples of those cases and receiving figures on the number of the different types of divorce pronounced since 1997.

59. **Mr. Ando** said that he would like further clarification on what police guidelines were for peaceful assembly. In particular, he would like to know what criteria were applied in deciding whether a gathering was likely to be violent and also what criteria the minister applied in designating a gazetted area in which an assembly required a permit. It would be helpful to have a few examples in which a request for a gathering had been made but refused.

60. More information would be welcome on the three main areas indicated in paragraph 460 of the report in which freedom of association had been restricted, namely, restrictions on the activities of political parties under the Movement system, restrictions on the movements of political opponents and the introduction of the suppression of terrorism bill. He would also find it helpful to learn of instances in which political parties had attempted to register and had been refused.

The meeting rose at 1 p.m.